

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Patent of:

Yoshihiro Suzuki et al.

Confirmation No.: 3652

Patent No.: 6,561,716

Art Unit: 3671

Issue Date: May 13, 2003

Examiner: Robert Pezzuto

Application No. 09/762,319

Filed: February 6, 2001

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For: UNIVERSAL JOINT DEVICE AND METHOD  
OF MANUFACTURING THE DEVICE

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**RESPONSE TO REQUEST FOR INFORMATION ON  
PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEES IN EXPIRED PATENT**

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

On November 11, 2010 a Petition was filed to accept payment of maintenance fees for U.S. Patent No. 6,561,716 ("the '716 patent") after expiration of the patent, wherein the delay in payment of the maintenance fees was unavoidable. 37 CFR §1.378(b). The petition was based on the assumption that Darby failed to provide MDC with instructions to pay the fee. In response the Office sent a request for information dated March 4, 2011, which was after Darby's office was completely closed and all the files had been transferred or destroyed. Petitioner nevertheless responded on April 5, 2011. However, on May 27, 2011 the Petition was denied. A Request for Reconsideration was filed on July 27, 2011, and the present Request for Information was issued on August 18, 2011. This request raises 22 questions with numerous subparts.

As a result of the Request for Information, the Petitioner conducted a further investigation by contacting the agent in Japan for the assignee, i.e., Kabasawa & Associates, as well as the successor to the maintenance fee service MDC, i.e., Thompson IP Management Services. Further, Petitioner was able to locate Mr. Perry Moy, the person at Darby whom it was assumed had made the error that resulted in non-payment of the fee. As a result of this further investigation it has been determined that Darby & Darby, and Mr. Moy in particular, did not make any error. Instead the facts now show that Mr. Moy correctly instructed MDC to pay the fee and that through human error at MDC the fee was not paid.

Answers to the specific 22 questions and subparts are provided in the attached Declaration of Melvin Garner. Support for these answers is in-part provided in the attached Declarations of Ms. Lorie Cindrich and Mr. Perry Moy. In view of these complete answers and the additional information uncovered and presented by this response, it is respectfully requested that the Petition be allowed and that the patent be reinstated.

**Legal Principles That Support Acceptance of This  
Late Payment of Maintenance Fee**

Under 35 U.S.C. § 41(b), the Director may accept late payment of a maintenance fee if the delay in payment is shown to have been "unavoidable." To satisfy the "unavoidable" standard, "one must show that he exercised the due care of a reasonably prudent person," *Ray v. Lehman*, 55 F.3d 606, 609 (Fed. Cir. 1995). This legal standard was also addressed in *In re Mattullath*, 38 App. D.C. 497, 514-15 (D.C. App. 1912), which explains the meaning of the word "unavoidable" in the context of delayed maintenance fee payments as follows:

It is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them, in the exercise of this care, to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all the other conditions of good faith and promptness in its ratification being present.

To paraphrase, if a patentee relies upon “the ordinary and trustworthy agencies of mail,” “worthy and reliable employees,” and “other means and instrumentalities” that are usually employed by “prudent and careful men in relation to their most important business,” and a failure occurs “unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities,” such failure may be said to have been “unavoidable” if all other “conditions of good faith and promptness” are present.

Here the assignee Somic Ishikawa and its agent Kabasawa relied in good faith upon these types of trustworthy and reliable means and instrumentalities. In particular, they provided clear instructions to Darby, a firm in business for 110 years, and a firm they could reasonably consider trustworthy and reliable. Further they received confirmation that their instructions to pay the fee had been carried out.

Darby had in place procedures for payment of maintenance fees and a staff dedicated to that process. It turns out that this staff did carry out the client’s instructions and properly notified MDC, a well known and respected agency dedicated to the payment of such fees.

It was a human error by the staff of MDC that caused a failure to pay the fee.

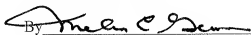
### **Conclusion**

Given the foregoing, the patentee hereby respectfully submits that the entire delay in paying the first (fourth year) maintenance fee for the ‘716 patent was unavoidable because it resulted from a single human error by a trusted employee of MDC, a firm in which the patentee, the patentee’s agent in Japan (Kabasawa & Associates) and the patentee’s agent in the U.S. (Darby & Darby) could reasonably have trusted.

If the U.S. Patent and Trademark Office determines that any additional fees are required, the Commissioner is hereby authorized and requested to charge any deficiency owed, and/or credit any refund due, to Deposit Account No. 50-4570.

Dated: October 17, 2011

Respectfully submitted,

By 

Melvin C. Garner

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent of:

Yoshihiro Suzuki et al.

Confirmation No.: 3652

Patent No.: 6,561,716

Art Unit: 3671

Filed: June 1, 2000

Examiner: Robert Pezzuto

For: UNIVERSAL JOINT DEVICE AND METHOD  
OF MANUFACTURING THE DEVICE

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Issued Date: May 13, 2003

**DECLARATION OF MELVIN GARNER IN SUPPORT OF PETITION TO ACCEPT  
UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEES IN EXPIRED PATENT**

1. I Melvin Garner, make this declaration in support of the Petition to Accept the Unavoidably Delayed Payment of the Maintenance Fee for Expired U.S. Patent No. 6,561,716 ("the '716 patent").

2. I have been registered to practice before the U.S. Patent & Trademark Office since 1974. My registration number is 26,272.

3. I was a shareholder of Darby & Darby P.C. ("Darby") from 1982 until the firm ceased the practice of law on March 31, 2010. During my time with Darby I was at various times a member of the Procedures Committee, a member of the Executive Committee and the Managing Shareholder. As a result, I am very familiar with the firm's policies and procedures. I was elected by the firm on March 15, 2010 to be a member of the firm's Dissolution Committee charged with winding down the firm's operations.

4. I previously investigated the failure of Darby to pay the first maintenance fee for U.S. Patent No. 6,561,716, the "'716 patent." I then prepared and filed a Petition to Accept Unavoidably Delayed Payment of Maintenance Fees in Expired Patent and a Petition for Reconsideration of Request to Accept Unavoidably Delayed Payment of Maintenance Fees in

Expired Patent and to Reinstate Patent Under 37 CFR § 1.378(E). In a Request for Information dated August 18, 2011, the Office requested additional information, and this declaration responds to that request.

5. During the time I was on the Procedures Committee I worked with the vendor, OP Solutions, in creating and setting up the electronic Patent And Trademark Tracking System called "PATTSY" that Darby used to track patent and trademark cases. I also worked on a number of procedures for handling patent matters and integrating them with PATTSY.

6. As of 2005 Darby had been in business as an intellectual property firm with a significant U.S. patent prosecution practice for 110 years. It had a separate department of the firm which handled maintenance and annuity fees, i.e., the Intake/Maintenance Fee Department. The department had an experienced manager, Ms. Lori Cindrich and from four to five paralegals. It also had well established and time-tested procedures for assuring that maintenance fees were timely paid. It used the PATTSY system to notify the maintenance and annuity fee paralegals as well as the working, supervising and billing attorneys if a due date was approaching.

7. As of March 31, 2010, Darby ceased the practice of law. After that date the Dissolution Committee with a staff that included Lori Cindrich began a process of winding down the firm. This included returning client files to the clients or sending them on to new counsel. It also included a process of shredding firm files so as not to disclose any attorney-client information. Among the files destroyed were mail ledgers, docket sheets, file wrappers and other such records. In fact, long before Darby closed its doors it began a process of destroying the file wrappers of issued patents in an effort to go to a paperless office, since this information was available from the Patent Office.

8. By October of 2010 the physical wind down of the firm was close to being complete. The firm wind down staff included only 8 out of nearly 200 former employees. The Petition was filed on November 10, 2010. By the end of December 2010, the staff was reduced to two people. By January 31, 2011, the firm's computer servers were decommissioned and sold

off, and the firm no longer had any employees. One person worked on a commission basis to help collect outstanding accounts receivables. When a Request for Information was received from the Office dated March 4, 2011, there were no physical or electronic files remaining from which additional information could be obtained.

9. In a Request for Information dated August 18, 2011, the Senior Petitions Attorney requested answers to 22 questions. The following are responses that relate to information that I have concerning those questions (which are listed in **bold**).

- a. 1. **The instant petition asserts “An attempt was made to locate him, but it was unsuccessful.”** Petition p. 2. **A. Is the assertion based on personal knowledge?**  
**B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?**
- b. 2. **The petition asserts the attempt to contact Moy “included a call to his last known employer, only to find out that he is no longer employed there.”** *Ibid.* **A. Is the assertion based on personal knowledge? B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion? C. What other steps were taken to contact Moy?**

This information was based on my personal knowledge. I was told by Lori Cindrich that she believed that Perry Moy had gone to the New York office of Baker Botts when he left Darby. I called the office and was told he did not work there and was not provided with any other information. At the time no other steps were taken to contact Mr. Moy. However, after receiving the Request of August 18, 2011, I recalled that a relative of Perry Moy had been the secretary of one of the former partners at Darby, but she had retired several years ago. I took a chance and asked that partner, who is now with another firm, if he knew how to get in touch with his former secretary. He did and she subsequently provided contact information for Mr. Moy. In particular, I was provided with an e-mail address and cell phone number for Mr. Moy. I sent him an e-mail and eventually spoke to him over the phone. As a

result of that contact I have been able to get a declaration from him, which is being submitted in response to the Request.

- e. 3. The petition asserts, “Mr. Moy was responsible for paying hundreds of maintenance fees, so it is not likely he would have any memory of this particular one.” *Ibid.* Does Garner believe Moy is unlikely to have any knowledge of any relevant facts, such as facts involving past training or procedures? If yes, why?

I did believe he would have relevant information about his training and the procedures. It is just that I did not think he would remember this particular payment. Further, I had information from Lori Cindrich about his training and the procedures, and I could not find him, so the best information available was provided. In any event, because of a recalled family relationship he had with a former secretary, I was able to subsequently find him.

- d. 4. The petition asserts Moy was assigned to handle quotes (sic?) the following language from a prior petition: “One of the paralegals, Perry Moy, was assigned to handle the payment.” *Id.* at 3. This request for information is not clear. Nevertheless the specific question is A. Is the assertion Moy was assigned to handle the payment based on personal knowledge? B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?

This information was based on Ms. Cindrich’s report to me as well as my observation of Mr. Moy’s initials (MFP) in the PATTSY screen (Exhibit B).

- e. 5. The petition asserts “Mr. Moy was well trained in the procedures that had been established.” *Ibid.* (quoting prior petition). A. Is the assertion based on personal knowledge? B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?



This information was based on a report from Ms. Cindrich. Accompanying my declaration is a declaration from Ms. Cindrich attesting to this and other information she provided to me. Also, enclosed is a declaration from Mr. Moy describing his training.

- f. 6. The petition asserts Mr. Moy “had paid numerous maintenance fees in the past without incident.” *Ibid.* The petition also asserts, “Darby paid literally hundreds of maintenance fees in this time period, and this is the only one where it appears that Mr. Moy made an error. The firm did have two or three other incidents, but these involved other people and other procedures.” *Id.* at 6. A. Is the assertion Moy had paid numerous maintenance fees in the past without incident based on personal knowledge? B. If the assertion Moy had paid numerous maintenance fees without incident is not based on personal knowledge, what is the factual basis for the assertion? C. How does Garner define “incident”? Specifically, what errors by Moy when handling maintenance fees in the past not fall within the Garner’s definition of “incident”? D. When Garner states this case is the only case where it appears Moy made a mistake during “this time period”, exactly what period of time is Garner referring to? For example, is he referring to Moy’s entire employment with Darby? E. To what extent is the assertion that it appears Moy did not make any other errors based on personal knowledge? F. What steps, if any, have been taken by Petitioner to determine if Moy made errors in other cases? For example, has Petitioner reviewed Moy’s processing of other maintenance fees during the weeks preceeding Moy’s “error” and the weeks following the “error” to determine if Moy made a similar error in any other case?

The assertion that Moy had paid numerous maintenance fees in the past without incident is partly based on my personal knowledge and partly based on information from Ms. Cindrich’s personal knowledge. I was personally familiar with the volume of maintenance fees the firm paid annually. Also, since an error that would impact

client rights would be discussed by the shareholders, I would have been aware of any major issue. I had in mind as an "incident" some event that would have a serious effect on a client's rights. When discussing "incident" in the Petition I was not addressing any errors made by Moy when handling maintenance fees in the past. As far as I know he did not make any such errors. In fact, when I noted that it appears that Moy made only this one mistake during the period, I was referring to the entire time he was charged with paying maintenance fees. Again, this was based on my recollection and that of Ms. Cindrich. I have not taken any steps to determine if Moy made errors in other cases, other than to ask him and Ms. Cindrich. Also, since the physical and electronic files of Darby no longer exist, there is really no way to conduct any further investigation. Further, without actual knowledge of errors by Mr. Moy, Darby was reasonable in treating him as a "worthy and reliable employee." *In re Mattullath*, 38 App. D.C. 497, 514-15 (D.C. App. 1912).

- g. 7. A review of Exhibit A indicates the client instructed Darby to pay the maintenance fee for the instant patent *and* instructed Darby to pay the "Tax Year: 12" maintenance fee for Patent No. 5,424,793. Office records indicate the 11.5 year maintenance fee was not paid for Patent No. 5,424,793. A. Please explain why the maintenance fee was not paid for Patent No. 5,424,793. B. Which assertions in the requested explanation are not based on personal knowledge, and what is the factual basis for each of those assertions?

In an effort to determine why the maintenance fee for Patent No. 5,424,793 (the "'793 patent") was not paid and to respond to question 11C, I contacted Thomson IP Management Services, the successor in interest to MDC, by phone to find out if they could explain this situation. They asked that my request for information be put in writing. A copy of my e-mail to Thomson requesting the information is attached as **Exhibit 1**. The e-mail response of Thomson is attached as **Exhibit 2**. It indicates that MDC did in fact receive instructions from Darby to pay the fee for both the '716 patent and the '793 patent. It also indicates that the failure to pay the fee was the result of human error at MDC. A copy of a letter from Perry Moy instructing MDS to

make the payments was attached to the e-mail and is attached hereto as **Exhibit 3**. Thus, it turns out that Darby did in fact carry out the client's instructions and relied on MDC as "the ordinary and trustworthy agency" for payment of maintenance fees.

- h. 8. The petition asserts, "[I]t appears that Mr. Moy had been with the ... Intake/Maintenance Fee Department for about two years." *Id* at 5. What is the factual basis for the assertion?**

The original basis for the assertion was the recollection of Ms. Cindrich. However, the accompanying declarations of Ms. Cindrich and Mr. Moy confirm it.

- i. 9. The petition states, "[Cindrich] personally trained Mr. Moy for about six months before he was allowed to operate independently." *Ibid*. A. Is the assertion Moy was personally trained by Cindrich for about six months based on personal knowledge? B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?**

The original basis for the assertion was the recollection of Ms. Cindrich. However, the accompanying declarations of Ms. Cindrich and Mr. Moy confirm it.

- j. 10. Petitioner has not supplied an affidavit, statement, or declaration from Cindrich. Has Cindrich been contacted to obtain information pertaining to the training received by Moy, the procedures Moy was instructed to follow, or the quality of Moy's work? If not, why not?**

As noted above, Ms. Cindrich was contacted to provide much of the information in the original petition. At the time she was no longer employed by Darby and was not obligated to assist. However, she has now been prevailed upon to submit a declaration and it accompanies this declaration.

- k. 11. The petition asserts Moy failed to send instructions to pay the fee to MDC. The petition also indicates such instructions were sent by e-mail and that Darby previously decommissioned and sold the e-mail servers. A Is the assertion May failed to send**

**instructions to pay the fee based on personal knowledge? B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion? C. What steps have been taken to verify Moy failed to send instructions to MDC to pay the fee?**

The original basis for the assertion was information from Ms. Cindrich as a result of her investigation of the matter. Basically she could not find the instruction to pay the fee among the files of Darby that remained at the time of the original petition. This is confirmed by her accompanying declaration. Further, on October 5, 2011, I personally called Thomson IP Management Services, and spoke to Ms. Laurie Zablocki. She told me that Thomson's electronic database indicates that in August of 2006 MDC received from Darby a request not to pay the fee for this patent. The electronic record does not identify who made the request or how. However, as indicated above, when the physical records were located and reviewed, it turned out that MDC did receive instructions to pay the fee, and the error was made by MDC.

**I. 12. The petition asserts Moy changed the database to indicate the maintenance fee had been paid. A Is the assertion based on Garner's personal knowledge? B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion? C. On what date was the database changed to indicate the maintenance fee had been paid?**

The assertion that Moy changed the database to indicate the maintenance fee had been paid is based on the investigation by Ms. Cindrich and on a personal review of Exhibit B, which shows the date of the change in the "Response" column on the "1<sup>st</sup> Maint Fee Due" line, i.e. the update was on 7/27/2006.

**m. 13. The petition asserts paralegals would not update Darby's database to show a fee had been paid until receiving confirmation the fee had been paid from MDC. A. Is the assertion based on personal knowledge? B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?**

This assertion was based on my consultation with Ms. Cindrich. However, the assertion is slightly inaccurate. In particular, at the time, i.e., 2005-2006, the paralegals would update PATTSY to show the fee was paid if they had instructed MDC to pay the fee. See Ms.

Cindrich's accompanying declaration. It is my understanding from a discussion with Ms. Cindrich that this was subsequently changed to require confirmation of payment from MDC before the database was updated.

**n. 14. The petition asserts Moy informed the Account Department the maintenance fee had been paid for the instant patent. A. Is the assertion based on personal knowledge? B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?**

This assertion is based on the copy of the invoice supplied by Kabasawa and the knowledge that the Accounting Department would not issue the invoice without being informed that the fee had been paid. It was my supposition that Perry Moy provided the Accounting Department with the information. However, this supposition is based on the fact that Perry Moy was assigned to the case and would be the person who would normally provide this information.

**o. 14. (Note this number is repeated in the Request) The petition asserts MDC would obtain information from Darby's database to determine fees due for a quarter. A. Is the assertion MDC would obtain information from Darby's database to determine the fees due for a quarter based on personal knowledge? B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?**

This assertion is based on my personal knowledge of the procedures and interactions with MDC. However, this information was confirmed by Ms. Cindrich and is set forth in the accompanying Cindrich declaration.

**p. 15. The petition asserts MDC would send Darby a list of cases where maintenance fees or annuities were due during the next quarter. A. Is the assertion based on personal knowledge? B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?**

This assertion is based on my personal knowledge of the procedures and interactions with MDC. However, this information was confirmed by Ms. Cindrich and is set forth in the accompanying Cindrich declaration.

**q. 16. The petition asserts Darby would check the list of cases received from MDC against a list generated from Darby's database. A. Is the assertion based on personal knowledge? B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?**

This assertion is based on my personal knowledge of the procedures and interactions with MDC. However, this information was confirmed by Mr. Moy and is set forth in the accompanying Moy declaration.

**r. 17. The petition asserts paralegals would notify the accounting department of the firm upon receiving confirmation a fee had been paid from MDC. A. Is the assertion based on personal knowledge? B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion? C. What exact method was used to [notify the accounting department?] Question C was incomplete and the bracketed language is assumed to be the Petition Attorney's question.**

The original assertion was based on my personal knowledge of the procedures and interactions with the Accounting Department. However, this information is basically confirmed by Mr. Moy in his accompanying declaration. The original assertion did not describe the method by which the Accounting Department was notified, but it is stated to have been by e-mail in the Moy declaration. Also, while the assertion is that accounting was told to generate the invoice upon confirmation from MDC that a fee had been paid, I have learned from Ms. Cindrich that at the time, the sending of the instruction to MDC to pay the fee would have caused the sending of the notice to Accounting to generate the invoice. According to Ms. Cindrich that practice was subsequently changed to require confirmation from MDC.

**s. 18. The petition asserts "[t]here is no evidence that Mr. Moy 'had been an unreliable or mistake-prone employee prior to misdoeketing.'" Id. at 12 (citation omitted). Is**

**Garner asserting no evidence that Mr. Moy had been unreliable or mistake-prone exists, or simply asserting he is not aware of any such evidence?**

This statement should have been that I am not aware of any such evidence and Ms. Cindrich was not aware of it either. In the enclosed declarations of Ms Cindrich and Mr. Moy they assert that they also are not aware of any such evidence.

**t. 19. The first, second, and third entries on the second page of Exhibit A are date-stamped July 26, 2006. The third entry is date-stamped June 26, 2006. A. Who added each date stamp? B. What does each date stamp mean?**

In response to this question I sent an e-mail to Kabasawa asking what the dates mean. Attached as **Exhibit 4** is an e-mail from Kabasawa which indicates that they put the date stamps on the Authorization list of Exhibit A to indicate when they sent payment instructions to Darby.

**u. 20. Exhibit B is a printout of a PATTSY screen listing a "Darby#" of "000K683-USO," a "CREP" of "FBOI0003PUS," and an "AREF" of MI596-232. Exhibit C is a copy of an invoice from Darby to the client. The petition asserts the invoice pertains to the instant patent. However, the invoice does not include a patent number, an application number, a "Darby#," a "CREP," or a "AREF." What is the factual basis for the conclusion the invoice pertains to the instant patent?**

As indicated in the Cindrich and Moy declarations, and as I can confirm from personal knowledge, at Darby invoices for maintenance fees were not issued against the particular client and matter number, but against a general matter number such as 9509450-000 on Exhibit C. It can be determined that this invoice was issued to Kabasawa for payment of the maintenance fee for the '716 patent because the amount of \$1212 is the same as on the client instructions of Exhibit A. Further, as noted in Exhibit D in the third paragraph, Exhibits A and C were provided by the client with the statement "For your information, we enclose herewith the invoice and acknowledgement of our instructions for this case as the file attachments." Also, in

attached **Exhibit 4**, Kabasawa states that the authorization attached to Exhibit 4 was attached to the invoice, and that is how they were able to identify the invoice as being for the '716 patent.

**v. 21. The invoice appears to indicate the invoice involves "Costs Advanced" on "08/31/06." A. If the date Moy informed the Accounting Department the maintenance fee was paid is July 26, 2007, why does the invoice appear to state costs were advanced on August 31, 2006?**

As indicated in the Cindrich and Moy declarations (paragraphs 13 and 15, respectively), and as I can confirm from personal knowledge, at Darby the date of the costs was made the last day of the billing period by the accounting software.

**w. 22. In addition to listing "08/31/06" below the heading "Costs Advanced," the invoice lists an "Invoice Date" of "August 31, 2006." The invoice also includes a date-stamp indicating the invoice was received by the client on August 30, 2006. Is petitioner aware of the reason the date of receipt of the invoice is earlier than the date of issuance of the invoice?**

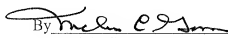
The petitioner is not aware of the reason for the client's date stamp being earlier than the date of the invoice. It could merely be that the client failed to update its date stamp on the receipt date.



10. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 10/17/2011

Respectfully submitted,

By \_\_\_\_\_  
Melvin C. Garner

# **GARNER EXHIBIT 1**

Melvin C. Garner

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**From:** Melvin C. Garner  
**Sent:** Thursday, October 06, 2011 4:14 PM  
**To:** 'IPMS.IPHelpPayments@thomsonreuters.com'  
**Subject:** Reinstatement of Abandoned US Patent No. 6,561,716  
**Attachments:** Okita - Kabasawa E-mail of Oct 20, 2010 (00154169).PDF; Annuity\_Authorization (00154162).PDF; PATTSY Screen (B W) for '716 Patent (00154174).PDF; KabasawaInvoice (00154161).PDF; Kabasawa\_Annuity (00154163).PDF

Attention: Laurie Zablocki

Dear Ms. Zablocki:

As I mentioned in our phone conversation yesterday, I am a former partner at Darby & Darby. The firm ceased the practice of law on March 31, 2010 and I am now a member of the Dissolution Committee of the firm. In October of 2010, when the firm was nearly completely shut down, we received an e-mail from Kabasawa & Associates stating that they had learned that U.S. Patent No. 6,561,716 had gone abandoned for failure to pay the maintenance fee in 2006. **A copy of the e-mail is attached.** They provided a copy of their **instructions to pay the fee, copy enclosed.** Before the office completely closed, we checked our PATTSY database and it showed the fee as being paid. **A copy of the PATTSY screen is attached.** Apparently Darby also sent Kabasawa an **invoice for the payment. A copy is enclosed.** While we are not completely sure, it appears that a **payment authorization** showing it as authorized to be paid, was attached to the invoice (**copy attached**).

We filed a petition on November 11, 2010 to revive the case on the grounds of unavoidably delayed payment based on the assumption that Darby failed to provide MDC with instructions to pay the fee. In response the Office sent a request for information dated March 4, 2011, which was after Darby's office was completely closed and all the files had been transferred or destroyed. We responded as best we could on April 5, 2011, but on May 27, 2011 the Petition was denied. We filed a request for reconsideration on July 27, 2011, and on August 18, 2011 the office issued a new request for information which asks: What steps have been taken to verify [that Darby] failed to send instructions to MDC to pay the fee?" Section 11 C. In order to respond to this request we are asking you for your files on the matter, since Darby no longer has any files. The Office also noted that on the same authorization sheet as the '716 patent there was an instruction to pay the fee on US Patent No. 5,424,793. The Office checked their records and noted that this case has also gone abandoned. As a result, they want to know "why the maintenance fee was not paid for Patent No. 5,424,793?" Section 7. B.

Therefore, as you suggested, I am requesting by this e-mail that that your office provide us a copy of any and all files you may have in electronic and hard copy form with respect to instructions received from Darby with respect to the payment of the 2006 maintenance fees for US Patent No. 6,561,716 and No. 5,424,793, and the actions that MDC took with respect to those instructions.

I understand that your physical files are in storage. However, I ask that they be provided as soon as possible. The Patent Office has given us until October 18<sup>th</sup> to respond.

*Please note our new address*

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[garner@leasonellis.com](mailto:garner@leasonellis.com)  
t. 914.821.8005

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**GARNER**  
**EXHIBIT 2**

**Melvin C. Garner**

---

**From:** jennifer.marlett@thomsonreuters.com  
**Sent:** Monday, October 10, 2011 4:21 PM  
**To:** Melvin C. Garner  
**Subject:** (LZ 12446) Reinstatement of Abandoned US Patent No. 6,561,716  
**Attachments:** DOC002.pdf

Dear Mr. Garner,

Further to your correspondence of October 6, 2011 requesting electronic records relating to US Patent Numbers 6,561,716 and 5,424,793, please find attached payment instructions received in our offices on August 16, 2006.

Upon further research, it has been identified your "PAY" instructions were not processed correctly due to human error. Over the past five years, there are a number of quality checks that have been put in place to minimize similar human errors.

Please let me know if further documentation is required.

Best regards,

Jennifer

---

**Jennifer Marlett**

IP Payments Support Analyst  
Certified Lean Six Sigma Green Belt  
Thomson IP Management Services

**Thomson Reuters**

Phone: +1 248 204 7427

jennifer.marlett@thomsonreuters.com  
thomsonreuters.com  
thomsonipmanagement.com

**Effective October 21, 2011**, the new address for our U.S. Headquarters Office is as follows. Please update your records accordingly.

Thomson IP Management Services  
30200 Telegraph Road  
Suite 300  
Bingham Farms, MI 48025  
USA

*This email is for the sole use of the intended recipient and contains information that may be privileged and/or confidential. If you are not an intended recipient, please notify the sender by return email and delete this email and any attachments.*

---

**From:** Zablocki, Laurie (Professional)  
**Sent:** Thursday, October 06, 2011 5:02 PM  
**To:** 'Melvin C. Garner'  
**Subject:** RE: (LZ 12446) Reinstatement of Abandoned US Patent No. 6,561,716

Dear Melvin,

I've received your e-mail and will research this further.

Sincerely,

Laurie Zablocki  
IP Payments Support Analyst  
Certified Lean Six Sigma Green Belt  
Thomson IP Management Services  
Thomson Reuters

---

**From:** Melvin C. Garner [mailto:Garner@leasonellis.com]  
**Sent:** Thursday, October 06, 2011 4:19 PM  
**To:** IPMS-IPHelpPayments  
**Subject:** (LZ 12446) Reinstatement of Abandoned US Patent No. 6,561,716

Attention: Laurie Zablocki

Dear Ms. Zablocki:

As I mentioned in our phone conversation yesterday, I am a former partner at Darby & Darby. The firm ceased the practice of law on March 31, 2010 and I am now a member of the Dissolution Committee of the firm. In October of 2010, when the firm was nearly completely shut down, we received an e-mail from Kabasawa & Associates stating that they had learned that U.S. Patent No. 6,561,716 had gone abandoned for failure to pay the maintenance fee in 2006. **A copy of the e-mail is attached.** They provided a copy of their **instructions to pay the fee, copy enclosed.** Before the office completely closed, we checked our PATTSY database and it showed the fee as being paid. **A copy of the PATTSY screen is attached.** Apparently Darby also sent Kabasawa an **invoice for the payment. A copy is enclosed.** While we are not completely sure, it appears that a **payment authorization** showing it as authorized to be paid, was attached to the invoice (**copy attached**).

We filed a petition on November 11, 2010 to revive the case on the grounds of unavoidably delayed payment based on the assumption that Darby failed to provide MDC with instructions to pay the fee. In response the Office sent a request for information dated March 4, 2011, which was after Darby's office was completely closed and all the files had been transferred or destroyed. We responded as best we could on April 5, 2011, but on May 27, 2011 the Petition was denied. We filed a request for reconsideration on July 27, 2011, and on August 18, 2011 the office issued a new request for information which asks: What steps have been taken to verify [that Darby] failed to send instructions to MDC to pay the fee?" Section 11 C. In order to respond to this request we are asking you for your files on the matter, since Darby no longer has any files. The Office also noted that on the same authorization sheet as the '716 patent there was an instruction to pay the fee on US Patent No. 5,424,793. The Office checked their records and noted that this case has also gone abandoned. As a result, they want to know "why the maintenance fee was not paid for Patent No. 5,424,793?" Section 7. B.

Therefore, as you suggested, I am requesting by this e-mail that that your office provide us a copy of any and all files you may have in electronic and hard copy form with respect to instructions received from Darby with respect to the payment of the 2006 maintenance fees for US Patent No. 6,561,716 and No. 5,424,793, and the actions that MDC took with respect to those instructions.

I understand that your physical files are in storage. However, I ask that they be provided as soon as possible. The Patent Office has given us until October 18<sup>th</sup> to respond.

*Please note our new address*

Melvin C. Garner  
LEASON ELLIS.  
One Barker Avenue  
Fifth Floor

White Plains, New York 10601

[garner@leasonellis.com](mailto:garner@leasonellis.com)

t. 914.821.8005

f. 914.288.0023

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**GARNER  
EXHIBIT 3**



# Darby & Darby, PC Annuity Payment Authorization List/Worksheet

Annunities Due 4th Quarter 2006

Client Number: 09450 - Kabasawa & Associates

Return to: Polly Stevens

Fax: (212) 527-7701

Number of Pages: 1

Country	Language(s)	Patent Number	Application Number	Due Date	Per (s) Due	Instructions
United States	Hideo FURUTA	6,560,495	09/513,363	11/6/2006	\$ 1212	Pay <input type="checkbox"/> Do not pay <input checked="" type="checkbox"/> Darby & Darby, PC <input checked="" type="checkbox"/> Not Responsible <input type="checkbox"/> (2)
Title: METHOD AND DEVICE FOR LOCKING WORK MACHINE						
Our Ref: 000699-US0						
ClientRefNo: P004US						
United States	Yoshihito SUZUKI	6,561,716	09/792,319	11/13/2006	\$ 1212	Pay <input checked="" type="checkbox"/> Do not pay <input type="checkbox"/> Darby & Darby, PC <input type="checkbox"/> Not Responsible <input type="checkbox"/> (2)
Title: UNIVERSAL JOINT DEVICE AND METHOD OF MANUFACTURING THE DEVICE						
Our Ref: 000693-US0						
ClientRefNo: P80103PLUS						
United States	Mitsuru FUKUSHIMA	5,424,793	08/223,701	12/13/2006	\$ 4112	Pay <input checked="" type="checkbox"/> Do not pay <input type="checkbox"/> Darby & Darby, PC <input type="checkbox"/> Not Responsible <input type="checkbox"/> (2)
Title: ZOOM LENS CAMERA VIEWFINDER						
Our Ref: 100698-US1						
ClientRefNo: P941US						
United States	Toshiyuki HANADA	5,420,560	08/135,064	11/30/2006	\$ 2212	Pay <input type="checkbox"/> Do not pay <input checked="" type="checkbox"/> Darby & Darby, PC <input checked="" type="checkbox"/> Not Responsible <input type="checkbox"/> (2)
Title: FUSE						
Our Ref: 100670-US1						
ClientRefNo: P827US						
Total Tax:					\$	8,748

4 Records for: 09450

**GARNER**  
**EXHIBIT 4**

Melvin C. Garner

---

**From:** kawasaki [kawasaki@kabasawa.com]  
**Sent:** Thursday, October 06, 2011 9:32 PM  
**To:** Melvin C. Garner  
**Subject:** Re: Reinstatement of the '716 Patent.  
**Attachments:** Kabasawa\_Annuity (00154163).pdf

Dear Sirs,

Thank you for your email of October 5 and 7, 2011.

As for your question, the stamp was stamped by Ms. Okita and the date means when the instructions were sent.

That is, the instruction of US 5,424,793 (the one without an arrow) was sent on June 26, 2011 and after that, the instructions of the patents with an arrow (US 6,560,495, US 6,561, 716 and US 5,420, 560) were sent on July 26, 2011.

And as for the basis for the conclusion the invoice pertains to the instant patent, the authorization (attached) was attached to the invoice and that is why we identified the invoice as the one for the 6,561,716 patent.

Since Ms. Okita is no longer with our firm, we were grateful if you send email to Kawasaki.

Sincerely Yours,  
Chihiro KAWASAKI  
for Satoshi KABASAWA

=====

KABASAWA & ASSOCIATES  
NSO BLDG., 1-22, SHINJUKU 3-CHOME  
SHINJUKU-KU, TOKYO 160-0022, JAPAN  
TEL: +81-3-3352-1561  
FAX: +81-3-3341-3591  
E-MAIL: [office@kabasawa.com](mailto:office@kabasawa.com)

----- Original Message -----

**From:** "Melvin C. Garner" <Garner@leasonellis.com>  
**To:** "OKITA" <okita@kabasawa.com>  
**Sent:** Friday, October 07, 2011 5:20 AM  
**Subject:** Reinstatement of the '716 Patent.

Dear Ms. Okita:

A further question has come up. We have noticed that in the Exhibits to our prior petition to revive the patent, the first sheet of Exhibit A has the pay box checked by what appears to be an electronic image (copy enclosed), which the second sheet of Exhibit A shows the pay box checked by hand. (copy enclosed). Is it possible that the first sheet was actually attached to the back of the invoice, a copy of which is enclosed. I am told by a former Darby employee that the way the invoice would identify the case for which the payment was made is by attaching a copy of the authorization to the invoice.

As you will note from the Request for Information (section 20) which we sent to you, the Petitions Attorney is questioning how we know the invoice was for the '716 patent.

I would appreciate your getting back to me as soon as possible with an answer to this question as well as the earlier ones, since time is running out in which to respond to the Petitions Attorney.

Please note our new address

Melvin C. Garner

LEASON ELLIS.

One Barker Avenue

Fifth Floor

White Plains, New York 10601

[garner@leasonellis.com](mailto:garner@leasonellis.com) <<mailto:garner@leasonellis.com>>

t. 914.821.8005

f. 914.288.0023

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Return to: Polly Stevens  
Fax: (212) 527-7701  
Number of Pages: \_\_\_\_\_

**Darby & Darby, PC Annuity Payment Authorization List/Worksheet**  
**Annuities Due 4th Quarter 2006**  
**Client Number: 09450 - Kabasawa & Associates**

United States  
Yoshihiro SUZUKI  
Title: UNIVERSAL JOINT DEVICE AND METHOD OF MANUFACTURING THE DEVICE  
Our Ref: 000683-US0  
ClientRefNo: FB01008PLUS

6,561,716

09/22/2006

11/13/2006  
Tax Year: 4

\$ 1212

Entity: Large

☐ Entity Status Has  
Changed

Paw

☒

Do not pay

☐

Darby & Darby, PC

Not Responsible

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:

Yoshihiro Suzuki et al.

Confirmation No.: 3652

Patent No.: 6,561,716

Art Unit: 3671

Filed: June 1, 2000

Examiner: Robert Pezzuto

For: UNIVERSAL JOINT DEVICE AND METHOD  
OF MANUFACTURING THE DEVICE

Issued Date: May 13, 2003

**DECLARATION OF LORI CINDRICH IN SUPPORT OF PETITION TO ACCEPT  
UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEES IN EXPIRED PATENT**

1. I Lori Cindrich, make this declaration in support of the Petition to Accept the Unavoidably Delayed Payment of the Maintenance Fee for Expired U.S. Patent No. 6,561,716 ("the '716 patent").

2. I was employed as a patent paralegal at Darby & Darby ("Darby") beginning in September 1995. I became Manager of the Intake/Maintenance Fee Department when it was first formed in 2004. I retained that position until the firm ceased the practice of law on March 31, 2010. After that I remained a part of the staff winding down the affairs of Darby until November 2010.

3. The Intake/Maintenance Fee Department not only was responsible for paying maintenance fees and annuities, this department was also responsible for intake, i.e., they created files for new cases in the office. One member of the group performed electronic conflict checks. The other task of the group was file transfer, i.e., they sent files to other firms at the request of clients and updated the patent database to show the transfer.

4. Perry Moy joined my department in 2004 and initially worked on conflict checks. At the time Ms. Polly Stevens worked on the payment of maintenance fees and annuities. When



she announced that she was leaving the firm, it was decided that Perry Moy should take her place. I directed Ms. Stevens to train Moy Perry for the job during her remaining weeks with the firm. After her departure, I took over his training, which lasted about six months, until he was allowed to operate independently. As part of his training I provided Perry Moy with written instructions and check lists for use in paying maintenance fees. Even after his formal training period, he sat in the same general space as I did and was only about 15 feet from me. I and others in the department were available to answer any of his questions that arose.

5. While I managed the Intake/Maintenance Fee Department, Darby had established procedures for assuring that maintenance fees were timely paid. These procedures included the use of an electronic docketing system called PATTSY that would notify the maintenance and annuity fee paralegals as well as the working, supervising and billing attorneys if a due date was approaching. The PATTSY database also contained information from which clients could be notified of maintenance and annuity fees due in the future.

6. In the period from 2005-2006 Darby had a contract with MDC to track and pay maintenance and annuity fees. I estimate that during that period of time Darby paid hundreds of maintenance fees without incident.

7. MDC would send Darby Payment Authorization Lists (such as the one attached as Exhibit A1) for each client on a quarterly basis. They would require that we return all instructions we received from clients in batch by a due date determined by MDC (usually one month before the particular quarter started). These instructions were sent both electronically and by courier to MDC. Instructions received after MDC's due date, were sent electronically to MDC on an individual basis as received.

8. MDC also received information on the matters handled by Darby from Darby's PATTSY database by being provided with a download of a copy of the PATTSY database that was sent to MDC on a quarterly basis. Thus, any entries in the database, e.g., newly issued patents for which a maintenance fee should be docketed, were provided to MDC.

9. Thus, at the end of 2005 the normal procedure for handling maintenance fees at Darby involved sending to clients, such as Kabasawa, a list of patents in which maintenance fees and annuities were due in the 4<sup>th</sup> Quarter of 2006. The clients would then return the list to Darby with an indication as to which annuity and maintenance fee should be paid. The marked list attached as **Exhibit A1**, which shows Kabasawa requesting that the maintenance fee for the '716 patent be paid, is typical of client instructions at the time.

10. Exhibit A1 has the date July 26, 2006 stamped on the second page next to case including those for which a maintenance fee was to be paid and those for which no payment was to be made. This stamp was not applied by Darby and most likely was applied by the client to indicate when they sent their instructions to Darby.

11. Upon receiving this list, the paralegal assigned to make the maintenance fee payment, in this case Perry Moy, would arrange with the MDC to pay the fee. If the list was received before the MDC due date, it would be bundled with instructions from other clients for transmission to MDC. If the instructions arrived after the due date they would be sent to MDC electronically. The Intake/Maintenance Fee Department kept records of correspondence with the clients organized by quarter as well as correspondence with MDC. This system was separate from the firm's general word processing and document management system, so that erroneous entries could not be made by personnel who had not been trained. According to the established procedure, when the paralegal was sure the fee had been paid, they would update the PATTSY program to show this payment. Attached as **Exhibit B** is a printout from the PATTSY program showing that the maintenance fee for the '716 patent had been paid on July 27, 2006. The initials MFP in the lower right-hand corner show that Perry Moy was the paralegal responsible for the maintenance fee in this case. Under no circumstances was the paralegal supposed to update PATTSY to show a payment had been made until they were sure MDC had been notified to make the payment.

12. The PATTSY database was generally closed to inputs from most firm personnel so that only those particularly trained and who did them every day could update the information

in PATTSY. Members of the Patent Services Department, Intake/Maintenance Fee Department and Docketing Department were generally the only ones allowed to input changes. The firm had a database administrator, Zulfikar Ali, who was responsible for the upkeep and maintenance of the database. He had access to PATTSY and could make changes. Darby also had a contract with OP Solutions the provider of PATTSY to provide maintenance and upgrades. OP Solutions also ran period data corruption checks. Thus, when granted permission by Darby, it could also make changes.

13. After being assured that MDC had been notified to make the payment, the paralegal would have notified the Accounting Department either individually or on a batch basis to generate an invoice to the client for the service. Attached **Exhibit C** is as a typical invoice issued to a client for payment of a maintenance fee. I can tell that this invoice was issued to Kabasawa for payment of the maintenance fee for the '716 patent because the amount of \$1212 is the same as on the client instructions of Exhibit A1. Also, the document attached as **Exhibit A2** was attached to the invoice to identify the case for which the payment was being made. At Darby invoices for maintenance fees were not issued against the particular client and matter number, but against a general matter file for maintenance fee payment as indicated on the invoice. Also, the date of the cost was made the last day of the billing period by the accounting system.

14. In October of 2010, after Darby had ceased to practice law and while I was working with the staff to wind up its affairs, the Dissolution Committee sent me a copy of an e-mail (copy attached as **Exhibit D**) in which Kabasawa & Associates asserted that Darby had failed to pay the first maintenance fee for the '716 patent despite their instructions to do so. I was asked to conduct an investigation to determine what had happened.

15. I reviewed a copy of that patent and could tell from the cover of the patent that it issued on May 13, 2003 and the first maintenance fee could have been paid during the period from May 13, 2006 to November 13, 2006. The fee also could have been paid with a surcharge

during the period from November 13, 2006 through May 13, 2007. The patent also indicates that the assignee is Kabushiki Kaisha Somic Ishikawa of Tokyo Japan.

16. As part of my investigation I reviewed the PATTSY database and generated the printout for the '716 patent which is attached as **Exhibit B**. The initials MFP in the lower right-hand corner of Exhibit B show that Perry Moy was responsible for the maintenance fee in this case. It also indicates that the maintenance fee had been paid on July 27, 2006. I also checked the U.S. Patent & Trademark Office's PAIR system and determined that in fact the maintenance fee had not been paid. I also checked Darby's communications with MDC and could not find any instructions to MDC to pay the fee for the '716 patent.

17. From my investigation it appeared that Perry Moy failed to notify MDC to pay the fee or at least MDC failed to receive an instruction to pay the fee. It would absolutely be a violation of procedure to update PATTSY to show the fee has been paid before confirming that MDC had been instructed to make the payment. This is the only time I am aware of where Perry Moy received a client's instruction to pay a fee and it appeared that he did not carry it out. Further, I am not aware of any other instance in which his actions resulted in the loss of rights for a client of Darby. As his Manager, I would have known if such a situation occurred.

18. The way the system was set up, if Perry Moy had merely forgotten to pay the fee, docket notices from PATTSY would have warned the attorneys assigned to the case and me that the fee was not paid and that the deadline was approaching. If Perry Moy had not notified the Accounting Department that the fee was paid, the billing attorney may have noticed an outstanding fee.

19. While typical departures from normal docketing would have been noticed, e.g., failure to pay the fee after being instructed to pay the fee by the client without updating PATTSY, this particular departure where PATTSY was updated, would not have been noticed by other Darby employees. If they looked at the correspondence file they would see the client's instructions to pay the fee. If they then double checked it against the PATTSY database they

would see that the fee had been paid. Only a query from MDC might have indicated a problem, but it appears that its connection to the PATTSY database removed that possibility.

20. I reported my findings to Melvin Garner, a member of the Dissolution Committee. Also, I provided him with information he used for the Petition to Revive the patent and the Request for Reconsideration. I particularly read and suggested corrections to the Request for Reconsideration so that it accurately reflected the facts as I knew them.

21. Melvin Garner has informed me that he contacted Thomson IP Management Services, the successor to MDC, and that they confirm receiving instructions from Perry Moy to pay the fee. Thus, the error was that of MDC and not Perry Moy or the Darby & Darby procedures.

22. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: October 14, 2011

Respectfully submitted,

By Lori Cindrich  
Lori Cindrich

**CINDRICH  
EXHIBIT A1**

Return to: Polly Stevens  
 Fax: (212) 577-7701  
 Number of Pages: \_\_\_\_\_

**Darby & Darby, PC Annuity Payment Authorization List/Worksheet**  
**Annunities Due 4th Quarter 2006**  
**Client Number: 09450 - Kabasawa & Associates**

United States	6,560,495	09/515,363	11/9/2006	\$ 1212	<input type="checkbox"/> Pay
Title: METH-OD AND DEVICE FOR LOCKING WORK MACHINE			Tax Year: 4	Entity: Large	<input type="checkbox"/> Do not pay
Our Ref: 000689-USO				<input type="checkbox"/> Entity Status Has	<input checked="" type="checkbox"/> Darby & Darby, PC
ClientRefNo: F0004US				Changed	<input type="checkbox"/> Not Responsible
<b>JUL 26, 2006</b>					
United States	6,561,748	09/762,319	11/13/2006	\$ 1212	<input checked="" type="checkbox"/> Pay
Title: UNIVERSAL JOINT DEVICE AND METHOD OF MANUFACTURING THE DEVICE			Tax Year: 4	Entity: Large	<input type="checkbox"/> Do not pay
Our Ref: 000689-USO				<input type="checkbox"/> Entity Status Has	<input type="checkbox"/> Darby & Darby, PC
ClientRefNo: F801030PUS				Changed	<input type="checkbox"/> Not Responsible
<b>JUL 26, 2006</b>					
United States	5,424,793	08/223,701	12/13/2006	\$ 4112	<input checked="" type="checkbox"/> Pay
Title: ZOOM LENS CAMERA VIEWFINDER			Tax Year: 12	Entity: Large	<input type="checkbox"/> Do not pay
Our Ref: 100689-US1				<input type="checkbox"/> Entity Status Has	<input type="checkbox"/> Darby & Darby, PC
ClientRefNo: P811TUS				Changed	<input type="checkbox"/> Not Responsible
<b>JUN 26, 2006</b>					
United States	5,420,560	08/135,054	11/30/2006	\$ 2212	<input type="checkbox"/> Pay
Title: FUSE			Tax Year: 12	Entity: Small	<input checked="" type="checkbox"/> Do not pay
Our Ref: 1006707-US1				<input type="checkbox"/> Entity Status Has	<input type="checkbox"/> Darby & Darby, PC
ClientRefNo: P822TUS				Changed	<input type="checkbox"/> Not Responsible
<b>JUL 26, 2006</b>				<b>Total Tax:</b>	<b>\$ 8,748</b>

*Satoshi Kabasawa*  
 SATOSHI KABASAWA  
 KABASAWA & ASSOCIATES

**CINDRICH  
EXHIBIT B**





# **CINDRICH EXHIBIT C**

IN AGREEMENT WITH

**DARBY &  
DARBY**

PROFESSIONAL  
CORPORATION

INTELLECTUAL PROPERTY LAW

NEW YORK

805 THIRD AVENUE  
NEW YORK, NY 10022  
TEL: 212.527.7700  
FAX: 212.527.7701

SEATTLE

1191 SECOND AVENUE  
SEATTLE, WA 98101  
TEL: 206.262.8900  
FAX: 206.262.8801

FEDERAL ID NO. 13-2709173

Invoice Date: August 31, 2006

Invoice No.: 691994

Kabasawa & Associates  
The NSO Building  
1-22, Shinjuku, 3-Chome  
Shinjuku-Ku, Tokyo 160, Japan

Client No: 09450

For Professional Services Rendered Through August 31, 2006, in Connection with the Following Matter:

9509450-000

**MAINTENANCE FEES/RENEWALS**

**Costs Advanced**

08/31/06 Maintenance Fees/Renewals 1,212.00

Total Costs Advanced \$ 1,212.00

Invoice Total \$ 1,212.00



# **CINDRICH EXHIBIT D**

Melvin C. Garner

From: OKITA [okita@kabasawa.com]  
Sent: Wednesday, October 20, 2010 1:37 AM  
To: agogoris@merchantgould.com; ludwig@fr.com; Melvin C. Garner  
Cc: KABASAWA satoishi; KABASAWA & Associates  
Subject: Status of the maintenance fee payment for U.S. Patent No. 6,661,716 (Darby's Ref.: 9450/0K683US0, Our Ref.: FB01003PUS)  
Attachments: Invoice and Acknowledgement.pdf; Our instructions.pdf  
Importance: High

Dear Sirs,

With respect to the above-mentioned U.S. Patent No. 6,561,716 (Darby's Ref.: 9450/0K683US0, Our Ref.: FB01003PUS), we noticed that it has already expired in 2007 due to non-payment of maintenance fees.

We are very surprised because we have already instructed Darby & Darby to proceed with payment of the maintenance fee, and have transferred payment soon after that. We didn't know the patent has already expired until recently, as we haven't received any notices informing us of the expiration of the patent (i.e. a Notice of Patent Expiration) from Darby & Darby.

For your information, we enclosed herewith the invoice and acknowledgement of our instructions for this case as the file attachments.

Please explain why the maintenance fee was not paid in spite of our instructions. At the same time, since our client consider this right to be important, please let us know if we can revive this patent or not.

Looking forward to hearing from you.

Yours sincerely,

Chika OKITA (Ms.)  
for Satoshi KABASAWA

KABASAWA & ASSOCIATES  
NSO BLDG., 1-22, SHINJUKU 3-CHOME  
SHINJUKU-KU, TOKYO 160-0022, JAPAN  
TEL: +81-3-3352-1561  
FAX: +81-3-3341-3591  
E-MAIL: [office@kabasawa.com](mailto:office@kabasawa.com)

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

---

In re Patent of:

Yoshihiro Suzuki et al.

Confirmation No.: 3652

Patent No.: 6,561,716

Art Unit: 3671

Filed: June 1, 2000

Examiner: Robert Pezzuto

For: UNIVERSAL JOINT DEVICE AND METHOD  
OF MANUFACTURING THE DEVICE

---

Issued Date: May 13, 2003

**DECLARATION OF PERRY MOY IN SUPPORT OF PETITION TO ACCEPT  
UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEES IN EXPIRED PATENT**

1. I Perry Moy, make this declaration in support of the Petition to Accept the Unavoidably Delayed Payment of the Maintenance Fee for Expired U.S. Patent No. 6,561,716 ("the '716 patent").

2. I was employed at Darby & Darby ("Darby") on a part-time basis in its Records Department for about four years while I was in college. After college I was employed full time at Darby & Darby for about two years, i.e., until September of 2006. During my two years of full employment I worked in the Intake/Maintenance Fee Department.

3. After leaving Darby I went to work at the firm of Baker Botts in New York. Since that time I have moved to another law firm.

4. When I first joined the Intake/Maintenance Fee Department of Darby & Darby in 2004, I worked on conflict checks. This involved making searches in the firm's computer database to determine if there was some conflict in the firm taking on a new client or new work from an existing client. The department had an experienced manager in Ms. Lori Cindrich and from four to five paralegals.

5. About six months after joining the Intake/Maintenance Fee Department, Ms. Polly Stevens, the paralegal in the department who took care of maintenance fees and annuities, announced that she was leaving the firm. It was decided that I should take over her position.

6. For about two weeks before she left Darby & Darby, Ms. Stevens sat with me and taught me how to handle maintenance fees and annuities. After Ms. Stevens left, the Manager of Intake/Maintenance Fee Department, Ms. Lori Cindrich, continued my training on the payment of maintenance fees and annuities for about six months before I was allowed to operate independently. As part of my training I was provided with written instructions and check lists for use in paying maintenance fees. Even after my training period, the personnel in the department, including me, all sat in the same office and were supervised by Ms. Cindrich. She was available to answer any questions that arose.

7. Based on my training by Ms. Stevens and Ms. Cindrich, I learned that Darby had established procedures for assuring that maintenance fees were timely paid. These procedures included the use of an electronic docketing system called PATTSY that would notify the maintenance and annuity fee paralegals as well as the working, supervising and billing attorneys if a due date was approaching. The PATTSY database also contained information from which clients could be notified of maintenance and annuity fees due in the future. I believe that I was well trained in the procedures that had been established and by the beginning of 2006 I had paid hundreds of maintenance fees without incident. This incident is the only one during my time at Darby in which it has been asserted that a maintenance fee in my charge was not handled correctly by me.

8. I have no specific recollection of the actions taken with respect to the first maintenance fee of '716 patent. However, I have reviewed a copy of that patent and I can tell from the cover of the patent that it issued on May 13, 2003 and the first maintenance fee for this patent could have been paid during the period from May 13, 2006 to November 13, 2006. The fee also could have been paid with a surcharge during the period from November 13, 2006

through May 13, 2007. I can also tell that the assignee of the patent is Kabushiki Kaisha Somic Ishikawa of Tokyo Japan ("Somic Ishikawa").

9. I do recall that Kabasawa & Associates of Tokyo, Japan ("Kabasawa") was a client of Darby and that the Intake/Maintenance Fee Department of Darby paid maintenance fees for Kabasawa's clients from time to time.

10. In the period from 2005 until I left Darby in September of 2006 Darby had a contract with MDC to track and pay maintenance and annuity fees. MDC received information on the matters handled by Darby from Darby's PATTSY database by being provided with a download of a copy of the PATTSY database that was sent to MDC on a quarterly basis. Thus, any entries in the database, e.g., newly issued patents for which a maintenance fee should be docketed, were provided to MDC.

11. Every quarter MDC would send Darby a list of the cases in which it believed that a maintenance or annuity was due in the next quarter. MDC would require that Darby return all instructions received from clients in batch form by a due date determined by MDC (usually one month before the particular quarter started). Darby would check this list against the one generated directly from PATTSY. The checked list would be sent to the client.

12. Thus, at the end of 2005 the normal procedure for handling maintenance fees at Darby involved sending to clients such as Kabasawa a list of patents in which maintenance fees and annuities were due in the 4<sup>th</sup> Quarter of 2006. The clients would then return the list to Darby with an indication as to which annuity and maintenance fee should be paid. The marked list attached as **Exhibit A1** which shows Kabasawa requesting that the maintenance fee for the '716 patent be paid, is typical of documents I reviewed at the time.

13. Upon receiving this list from the client, I would normally have arranged with MDC to pay the fee. If the list was received before the MDC due date, it would be bundled with instructions from other clients for transmission to MDC. These instructions were sent both electronically and by courier to MDC. If the instructions arrived after the due date the individual



instructions would be sent to MDC electronically. The Intake/Maintenance Fee Department kept records of correspondence with the clients organized by quarter as well as correspondence with MDC. This system was separate from the firm's general word processing and document management system, so that erroneous entries could not be made by personnel who had not been trained. When I was sure that MDC had been instructed to pay the fee, I have would updated the PATTSY program to show this payment. The PATTSY database was generally closed to inputs from most firm personnel so that only those particularly trained and who did them every day could update the information in PATTSY.

14. I recognize attached **Exhibit B** as a printout from the PATTSY program. The initials MFP in the lower right-hand corner show that I was responsible for the maintenance fee in this case. Exhibit B also indicates that the maintenance fee had been paid on July 27, 2006.

15. After instructing MDC to make the payment, I would have notified the Accounting Department by e-mail to generate an invoice to the client for the service. Attached **Exhibit C** is as a typical invoice issued to a client for payment of a maintenance fee. While I do not recall this particular invoice, it appears to have been issued to Kabasawa for payment of the maintenance fee for the '716 patent. I can tell that this invoice was issued to Kabasawa for payment of the maintenance fee because the amount of \$1212 is the same as on the client instructions of Exhibit A1. Also, the document attached as **Exhibit A2** would have been attached to the invoice to identify the case for which the payment was being made. At Darby invoices for maintenance fees were not issued against the particular client and matter number, but against a general matter file. Also, the date of the cost was made the last day of the billing period.

16. It would absolutely be a violation of Darby procedure to update PATTSY to show the fee has been paid before confirming that MDC had been instructed to make the payment. This is the only time I am aware of where there is an allegation that a client's instruction to pay a fee was not carried out by me. Also, I am not aware of any other instance in which my actions resulted in the loss of rights for a client of Darby.

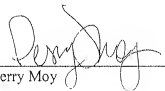
17. It appears that I updated PATTSY to show that the fee was paid. I understand that the way the system was set up, if I had merely forgotten to pay the fee, docket notices from PATTSY would have warned the attorneys assigned to the case and the manager of the department that the fee was not paid and that the deadline was approaching. If I had not notified accounting that the fee was paid, the billing attorney may have noticed an outstanding fee.

18. Melvin Garner has informed me that MDC provided a copy of a letter from me showing that I did in fact instruct them to pay the fee. A copy is attached as **Exhibit D**. I can confirm that the signature on Exhibit D is mine.

19. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 10/17/11

Respectfully submitted,

By   
Perry Moy

**MOY**  
**EXHIBIT A1**

# Darby & Darby, PC Annuity Payment Authorization List/Worksheet

Return to: Polly Stevens  
Fax: (212) 527-7701  
Number of Pages: \_\_\_\_\_

Annunities Due 4th Quarter 2006

Client Number: 09450 - Kabasawa & Associates

United States	Hideo Furuta	09/513,363	11/6/2006	\$ 1212	Entity: Large	<input type="checkbox"/> Pay <input type="checkbox"/> Bonnet pay <input checked="" type="checkbox"/> Darby & Darby, PC <input type="checkbox"/> Not Responsible
Title:	METHOD AND DEVICE FOR LOCKING WORK MACHINE		Tax Year: 4		Entity Status Has	
Our Ref:	000680-US0				Changed	
ClientRefNo:	P0004US					
United States	Yoshihiro Suzuki	09/762,319	11/13/2006	\$ 1212	Entity: Large	<input checked="" type="checkbox"/> Pay <input type="checkbox"/> Bonnet pay <input type="checkbox"/> Darby & Darby, PC <input type="checkbox"/> Not Responsible
Title:	UNIVERSAL JOINT DEVICE AND METHOD OF MANUFACTURING THE DEVICE		Tax Year: 4		Entity Status Has	
Our Ref:	000688-US0				Changed	
ClientRefNo:	F001009US					
United States	Mitsun Fukushima	5,424,793	06/223,701	\$ 4112	Entity: Large	<input checked="" type="checkbox"/> Pay <input type="checkbox"/> Bonnet pay <input type="checkbox"/> Darby & Darby, PC <input type="checkbox"/> Not Responsible
Title:	ZOOM LENS CAMERA VIEWFINDER		Tax Year: 12		Entity Status Has	
Our Ref:	100698-US1				Changed	
ClientRefNo:	P941US					
United States	Tohyuki Hanada	5,420,560	08/135,064	\$ 2212	Entity: Small	<input checked="" type="checkbox"/> Pay <input type="checkbox"/> Do not pay <input type="checkbox"/> Darby & Darby, PC <input type="checkbox"/> Not Responsible
Title:	FUSE		Tax Year: 12		Entity Status Has	
Our Ref:	1006707-US1				Changed	
ClientRefNo:	P6227US					
4 Records for: 09450				Total Tax:	\$	8,748

  
Satoshi KABASAWA  
KABASAWA & ASSOCIATES

**MOY**  
**EXHIBIT A2**

Return to: Polly Stevens

Fax: (212) 321-7701

Number of Pages: \_\_\_\_\_

# Darby & Darby, PC Annuity Payment Authorization List/Worksheet

Annuitants Due 4th Quarter 2006

Client Number: 0150 - Kabasawa & Associates

United States	Yachitino SLIZING	6,561,716	09/22/319	11/13/2006	\$ 1212	<input checked="" type="checkbox"/> Fw
TRM: US/CRSAL JOINT DEVICE AND METHOD OF MANUFACTURING THE DEVICE				Tax Year: 4	Emp: Large	<input type="checkbox"/> Do not pay
Client Ref: 000663-US0					<input checked="" type="checkbox"/> Entry Status Has	<input type="checkbox"/> Darby & Darby, PC
Client Identifier: F07106HUS					Changed	<input type="checkbox"/> Not Responsible

**MOY**  
**EXHIBIT B**





**MOY**  
**EXHIBIT C**

IN ACCOUNT WITH:

**DARBY &  
DARBY**

PROFESSIONAL  
CORPORATION

INTELLECTUAL PROPERTY LAW

NEW YORK

806 THIRD AVENUE  
NEW YORK, NY 10022  
TEL: 212.627.7700  
FAX: 212.627.7701

SEATTLE

1191 SECOND AVENUE  
SEATTLE, WA 98101  
TEL: 206.262.8900  
FAX: 206.262.8901

FEDERAL ID NO. 13-2768173

Invoice Date: August 31, 2006

Invoice No.: 691994

Kabasawa & Associates  
The NSO Building  
1-22, Shinjuku, 3-Chome  
Shinjuku-Ku, Tokyo 160, Japan

Client No: 09450

For Professional Services Rendered Through August 31, 2006, in Connection with the Following Matter:

9509450-000

**MAINTENANCE FEES/RENEWALS**

**Costs Advanced**

08/31/06 Maintenance Fees/Renewals 1,212.00

Total Costs Advanced \$ 1,212.00

Invoice Total \$ 1,212.00



**MOY**  
**EXHIBIT D**

DARBY &  
DARBY

PROFESSIONAL  
CORPORATION

INTELLECTUAL PROPERTY LAW

NEW YORK  
805 THIRD AVENUE  
NEW YORK, NY 10022-7513  
TEL 212.527.7700  
FAX 212.527.7701

SEATTLE  
1191 SECOND AVENUE  
SEATTLE, WA 98101-3404  
TEL 206.262.8900  
FAX 206.262.8901

August 15, 2006

*DARP*  
**PERRY MOY**  
ANNUITIES PARALEGAL  
917.286.2948  
pmoy@darbylaw.com

**MDC Received**  
AUG 16 2006

Jessica Leese  
MDC - Master Data Center  
300 Franklin Center  
29100 Northwestern Highway  
Southfield, MI 48034

Dear Jessica:

Please find enclosed our 4Q-06 Decision List.

Thank you.

Sincerely,

*Perry Moy*  
Perry Moy

# Darby & Darby, PC Annuity Payment Authorization List/Worksheet

Annuitants Due 4th Quarter 2006

Client Number: 09450 - Kabasawa & Associates

Return to: Polly Stevens  
Fax: (212) 527-7701  
Number of Pages: 1

Country	Inventor(s)	Patent Number	Application Number	Due Date	Entity Type	Instructions
United States	Hideo FURUTA	6,560,485	09/513,383	11/02/2006	\$ 1212 Entity: Large Tax Year: 4 Entity Status Has Changed	<input type="checkbox"/> Pay <input checked="" type="checkbox"/> Do not pay Darby & Darby, PC Not Responsible
United States	Yoshihiro SUZUKI	6,561,716	09/762,319	11/13/2006	\$ 1212 Entity: Large Tax Year: 4 Entity Status Has Changed	<input checked="" type="checkbox"/> Pay <input type="checkbox"/> Do not pay Darby & Darby, PC Not Responsible
United States	Mitsuru FUKUSHIMA	5,424,793	08/223,701	12/13/2006	\$ 4112 Entity: Large Tax Year: 12 Entity Status Has Changed	<input checked="" type="checkbox"/> Pay <input type="checkbox"/> Do not pay Darby & Darby, PC Not Responsible
United States	Tooshiyuki HANADA	5,420,560	08/135,064	11/30/2006	\$ 2212 Entity: Small Tax Year: 12 Entity Status Has Changed	<input type="checkbox"/> Pay <input checked="" type="checkbox"/> Do not pay Darby & Darby, PC Not Responsible
Total Tax:					\$	8,748

4 Records for: 09450